

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAJ SINGH,

Petitioner,

vs.

MINERAL COUNTY JUSTICE COURT,

Respondents.

3:14-cv-00552-LRH-VPC

ORDER

Before the court is a petition for writ of habeas corpus filed under 28 U.S.C. § 2241, with which petitioner asks the court to prevent his state prosecution on drug-related charges. Petitioner indicates that he was arrested in Sacramento, California, that he posted bail, and that he faces extradition to Nevada. The court has reviewed his petition pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

This court may entertain a petition for a writ of habeas corpus under 28 U.S.C. § 2241(c)(3) by a person who is in custody but not yet convicted or sentenced. *See McNeely v. Blanas*, 336 F.3d 822, 824 n. 1 (9th Cir.2003); *Application of Floyd*, 413 F.Supp. 574, 576 (D. Nev.1976). Although there is no exhaustion requirement for a petition brought under 28 U.S.C. § 2241(c)(3), principles of federalism and comity require that this court abstain until all state criminal proceedings are completed and the petitioner exhausts available judicial state remedies, unless special circumstances warranting federal intervention prior to a state criminal trial can be found. *See Carden v. Montana*,

1 626 F.2d 82, 83-84 & n. 1 (9th Cir. 1980); *see also Younger v. Harris*, 401 U.S. 37, 43-54 (1971)
2 (under principles of comity and federalism, a federal court should not interfere with ongoing state
3 criminal proceedings by granting injunctive or declaratory relief absent extraordinary circumstances).
4 The special circumstances that might warrant federal habeas intervention before trial include proven
5 harassment, bad faith prosecutions, and other extraordinary circumstances where irreparable injury
6 can be shown. *Carden*, 626 F.2d at 84 (violation of speedy trial right not alone an extraordinary
7 circumstance).

8 In his petition, petitioner alleges that he owns real property located within the boundaries of
9 the Walker River Indian Reservation. He further alleges that his state prosecution stems from the
10 possession of marijuana plants by Indians on that property. He contends the prosecution is unlawful
11 because Nevada lacks jurisdiction over acts committed by Indians in Indian Country and because he
12 was residing in California at the relevant time.

13 These alleged defects are not the type circumstances that warrant federal intervention before
14 petitioner's state criminal proceeding, including any appeal, is completed. As such, this court will
15 abstain and dismiss the petition without prejudice. The claims contained in the petition are matters
16 that can and should be addressed in the first instance by the state trial court, and then by the state
17 appellate courts, before petitioner seeks a federal writ of habeas corpus.

18 The dismissal of this action is without prejudice to petitioner filing a new habeas petition, but
19 he should not file a new federal petition for writ of habeas corpus unless he gets convicted and then
20 not until his direct appeal and state habeas proceedings have concluded and he has given the state's
21 highest court a fair opportunity to rule on each of his claims.

22 **IT IS THEREFORE ORDERED** that the petition for writ of habeas corpus (ECF No. 2) is
23 **DENIED** without prejudice. The clerk shall **enter judgment** accordingly and **close** this case.


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1 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF
2 No. 3) is DENIED as moot.

3 Dated this 13th day of May, 2015.

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6 LARRY R. HICKS
7 UNITED STATES DISTRICT JUDGE
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